

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

LEROY CHARLES WILSON,

§

VS.

§

CIVIL ACTION NO. 4:12-CV-668-Y

§

RICK THALER,

§

Director, T.D.C.J.

§

Correctional Institutions Div.

§

ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS AND CONCLUSIONS
AND ORDER DENYING CERTIFICATE OF APPEALABILITY
(With special instructions to the clerk of Court)

In this action brought by petitioner Leroy Charles Wilson under 28 U.S.C. § 2254, the Court has made an independent review of the following matters in the above-styled and numbered cause:

1. The pleadings and record;
2. The proposed findings, conclusions, and recommendation of the United States magistrate judge filed on February 8, 2013; and
3. The petitioner's written objections to the proposed findings, conclusions, and recommendation of the United States magistrate judge filed on February 21, 2013.¹

The Court, after **de novo** review, concludes that Petitioner's objections must be overruled, and that the petition for writ of habeas corpus should be dismissed with prejudice as time-barred under 28 U.S.C. § 2244, for the reasons stated in the magistrate judge's findings and conclusions.

Therefore, the findings, conclusions, and recommendation of the magistrate judge are ADOPTED.

¹On December 18, 2012, petitioner Wilson filed a document entitled "Motion to Rebut to Response to Respondent." After review and consideration, this document should be and has been reviewed as a reply to the Respondent's December 5, 2012 answer. The clerk of court is directed to note this on the docket and list the entry as a reply rather than a motion.

Petitioner Leroy Charles Wilson's petition for writ of habeas corpus is DISMISSED WITH PREJUDICE.

Certificate of Appealability

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253.² Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court "must issue or deny a certificate of appealability when it enters a final order adverse to the applicant."³ The COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right."⁴ A petitioner satisfies this standard by showing "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists of reason could conclude the issues presented are adequate to deserve encouragement to proceed further."⁵

Upon review and consideration of the record in the above-referenced case as to whether petitioner Wilson has made a showing that reasonable jurists would question this Court's rulings, the Court determines he has not and that a certificate of appealability should not issue for the reasons stated in the February 8, 2013 Findings, Conclusions, and Recommendation of the United States Magistrate Judge.⁶

²See Fed. R. App. P. 22(b).

³RULES GOVERNING SECTION 2254 PROCEEDINGS IN THE UNITED STATES DISTRICT COURTS, RULE 11(a) (December 1, 2009).

⁴28 U.S.C.A. § 2253(c)(2)(West 2006).

⁵*Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003)(citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

⁶See Fed. R. App. P. 22(b); see also 28 U.S.C.A. § 2253(c)(2)(West 2006).

Therefore, a certificate of appealability should not issue.

SIGNED February 27, 2013.

Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE